

HOUSE BILL 1715
By Turner L

AN ACT to amend Tennessee Code Annotated, Title 47
and Title 47, relative to mortgages and deeds of
trust.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 47, Chapter 15, is amended by adding
Sections 2 through 5 as a new part thereto.

SECTION 2.

(a) Notwithstanding any other provision of this chapter, parties to a home loan
may contract in writing as follows:

(1) Where the principal amount is ten thousand dollars (\$10,000) or
more, the parties may contract for the payment of interest as agreed upon by the
parties.

(2) Where the principal amount is less than ten thousand dollars
(\$10,000), the parties may contract for the payment of interest as agreed upon by
the parties, if the lender is:

(A) Approved as a mortgagee by the Secretary of Housing and
Urban Development, the Federal Housing Administration, the Department
of Veterans Affairs, a national mortgage association or any federal
agency; or

(B) A local or foreign bank, savings and loan association or
service corporation wholly owned by one or more savings and loan
associations and permitted by law to make home loans, credit union or
insurance company; or

(C) A state or federal agency.

(3) Where the principal amount is less than ten thousand dollars (\$10,000) and the lender is not a lender as described in subdivision (2), the parties may contract for the payment of interest not in excess of sixteen percent (16%) per annum.

(4) Notwithstanding any other provision of law, where the lender is an affiliate operating in the same office or a subsidiary operating in the same office of a licensee, the lender may charge interest to be computed only monthly on the outstanding principal balance at a rate not to exceed the rate provided in this section.

(5) On the fifteenth day of each month, the commissioner of financial institutions shall announce and publish the maximum rate of interest permitted by this subdivision. Such rate shall be the latest published noncompetitive rate for U.S. Treasury bills with a six-month maturity as of the fifteenth day of the month plus six percent (6%), rounded upward or downward, as the case may be, to the nearest one-half of one percent ($1/2$ of 1%) or fifteen percent (15%), whichever is greater. If there is no nearest one-half of one percent ($1/2$ of 1%), the commissioner shall round downward to the lower one-half of one percent ($1/2$ of 1%). The rate so announced shall be the maximum rate permitted for the term of loans made under this section during the following calendar month when the parties to such loans have agreed that the rate of interest to be charged by the lender and paid by the borrower shall not vary or be adjusted during the term of the loan. The parties to a loan made under this section may agree to a rate of interest which shall vary or be adjusted during the term of the loan in which case the maximum rate of interest permitted on such loan during a month during the term of the loan shall be the rate announced by the commissioner in the preceding calendar month.

(6) An affiliate operating in the same office or a subsidiary operating in the same office of a licensee may not make a home loan for a term in excess of

six (6) months that provides for a balloon payment. For purposes of this section, a balloon payment means any scheduled payment that is more than twice the amount as the average of earlier scheduled payments. This subsection does not apply to equity lines of credit.

(b) Except as provided in this section, a lender and a borrower may agree on any terms as to the prepayment of a home loan.

(1) No prepayment fees or penalties shall be contracted by the borrower and lender with respect to any home loan in which:

(A) The principal amount borrowed is one hundred fifty thousand dollars (\$150,000) or less;

(B) The borrower is a natural person;

(C) The debt is incurred by the borrower primarily for personal, family, or household purposes; and

(D) The loan is secured by a first mortgage or first deed of trust on real estate upon which there is located or there is to be located a structure or structures designed principally for occupancy of from one (1) to four (4) families that is or will be occupied by the borrower as the borrower's principal dwelling.

(2) The limitations on prepayment fees and penalties contained in subdivision (b)(1) of this section shall not apply to the extent state law limitations on prepayment fees and penalties are preempted by federal law or regulation.

(c) If the home loan is one described in subdivision (a)(1) or subdivision (a)(2) of this section, the lender may charge the borrower the following fees and charges in addition to interest and other fees and charges as permitted in this section and late payment charges otherwise permitted:

(1) Except as otherwise provided, at or before loan closing, the lender may charge such of the following fees and charges as may be agreed upon by

the parties, notwithstanding the provisions of any state law limiting the amount of such fees or charges:

(A) Loan application, origination, and commitment fees;

(B) Discount points, but only to the extent the discount points are paid for the purpose of reducing, and in fact result in a bona fide reduction of, the interest rate or time-price differential;

(C) Assumption fees;

(D) Appraisal fees;

(E) Sums for the payment of bona fide loan-related goods, products, and services provided or to be provided by third parties and sums for the payment of taxes, filing fees, recording fees, and other charges, and fees paid or to be paid to public officials; and

(F) Additional fees and charges, however denominated, payable to the lender that, in the aggregate, do not exceed the greater of:

(i) One quarter of one percent ($1/4$ of 1%) of the principal amount of the loan; or

(ii) One hundred fifty dollars (\$150).

(2) Except as provided in subdivision (c)(2)(I) with respect to the deferral of loan payments, upon modification, renewal, extension, or amendment of any of the terms of a home loan, the lender may charge such of the following fees and charges as may be agreed upon by the parties, notwithstanding the provisions of any state law limiting the amount of such fees or charges:

(A) Discount points, but only to the extent the discount points are paid for the purpose of reducing, and in fact result in a bona fide reduction of, the interest rate or time-price differential;

(B) Assumption fees;

(C) Appraisal fees;

(D) Sums for the payment of bona fide loan-related goods, products, and services provided or to be provided by third parties and sums for the payment of taxes, filing fees, recording fees, and other charges, and fees paid or to be paid to public officials; and

(E) Additional fees and charges, however denominated, payable to the lender that, in the aggregate, do not exceed the greater of:

(i) One quarter of one percent ($1/4$ of 1%) of the balance outstanding at the time of the modification, renewal, extension, or amendment of terms; or

(ii) One hundred fifty dollars (\$150).

The fees and charges permitted by this subdivision may be charged only pursuant to a written agreement that states the amount of the fee or charge and is made at the time of the specific modification, renewal, extension, or amendment, or at the time the specific modification, renewal, extension, or amendment is requested.

(F) No lender on home loans under subdivision (a)(3) of this section may charge or receive any interest, fees, charges, or discount points other than:

(i) Sums for the payment of bona fide loan-related goods, products, and services provided or to be provided by third parties and sums for the payment of taxes, filing fees, recording fees, and other charges and fees, paid or to be paid to public officials;

(ii) Interest as permitted in subdivision (a)(3) of this section; and

(iii) Late payment charges.

(G) No lender of home loans under subdivision (a)(3) of this section may charge or receive any interest, fees, charges, or discount points other than:

(i) The fees described in subsection (c);

(ii) Sums for the payment of bona fide loan-related goods, products, and services provided or to be provided by third parties and sums for the payment of taxes, filing fees, recording fees, and other charges and fees, paid or to be paid to public officials;

(iii) Interest as permitted in subdivision (a)(3) of this section; and

(iv) Late payment charges.

(H) The term "home loan" shall mean a loan, other than an open-end credit plan, where the principal amount is less than three hundred thousand dollars (\$300,000) secured by a first mortgage or first deed of trust on real estate upon which there is located or there is to be located one (1) or more single-family dwellings or dwelling units.

(I) The parties to a home loan governed by subdivision (a)(1) or (2) of this section may contract the payment of all or part of one (1) or more unpaid installments and for payment of interest on deferred interest as agreed upon by the parties. The parties may agree that deferred interest may be added to the principal balance of the loan. This subsection shall not be construed to limit payment of interest upon interest in connection with other types of loans. The lender may charge deferral fees as may be agreed upon by the parties to defer the payment of one (1) or more unpaid installments. If the home loan is of a type described in subsection (a)(1), the deferral fees shall be subject to the limitations set forth in this subsection:

(i) A home loan will be subject to the deferral fee limitations set forth in this subsection if:

(a) The borrower is a natural person;

(b) The debt is incurred by the borrower primarily for personal, family, or household purposes; and

(c) The loan is secured by a first mortgage or first deed of trust on real estate upon which there is located or there is to be located a structure or structures designed principally for occupancy of from one (1) to four (4) families which is or will be occupied by the borrower as the borrower's principal dwelling.

(ii) Deferral fees for home loans identified in this subsection shall be subject to the following limitations:

(a) Deferral fees may be charged only pursuant to an agreement that states the amount of the fee and is made at the time of the specific deferral or at the time the specific deferral is requested; provided, that if the agreement relates to an installment which is then past due for fifteen (15) days or more, the agreement must be in writing and signed by at least one (1) of the borrowers. For purposes of this subdivision an agreement will be considered a signed writing if the lender receives from at least one (1) of the borrowers a facsimile or computer-generated message confirming or otherwise accepting the agreement.

(b) Deferral fees may not exceed the greater of five percent (5%) of each installment deferred or fifty dollars (\$50.00), multiplied by the number of complete months in the deferral period. A month shall be measured from the date an installment is due. The deferral period is that period during which no payment is required or made as

measured from the date on which the deferred installment would otherwise have been due to the date the next installment is due under the terms of the note or the deferral agreement.

(c) If a deferral fee has once been imposed with respect to a particular installment, no deferral fee may be imposed with respect to any future payment that would have been timely and sufficient but for the previous deferral.

(d) If a deferral fee is charged pursuant to a deferral agreement, a late charge may be imposed with respect to the deferred payment only if the amount deferred is not paid when due under the terms of the deferral agreement and no new deferral agreement is entered into with respect to that installment.

(e) No lender may charge a deferral fee for modifying or extending the maturity date of a loan or the date a balloon payment is due; provided, that any such modification or extension of the loan maturity date or the date a balloon payment is due shall, to the extent applicable, be considered a modification or extension subject to the provisions of subdivision (c)(2) of this section.

(d) The parties to a home loan governed by subdivision (a)(1) or (2) of this section may agree in writing to a mortgage or deed of trust that provides that periodic payments may be graduated during parts of or over the entire term of the loan. The parties to such a loan may also agree in writing to a mortgage or deed of trust that provides that periodic disbursements of part of the loan proceeds may be made by the

lender over a period of time agreed upon by the parties, or over a period of time agreed upon by the parties ending with the death of the borrower(s). Such mortgages or deeds of trust may include provisions for adding deferred interest to principal or otherwise providing for charging of interest on deferred interest as agreed upon by the parties. This subsection shall not be construed to limit other types of mortgages or deeds of trust or methods or plans of disbursement or repayment of loans that may be agreed upon by the parties.

(e) Nothing in this section shall be construed to authorize or prohibit a lender, a borrower, or any other party to pay compensation to a mortgage broker or a mortgage banker for services provided by the mortgage broker or the mortgage banker in connection with a home loan.

SECTION 3. A lender shall mail to the borrower an offer to refinance a balloon payment under a loan at least twenty (20) days before the balloon payment date if at that time no payments under the loan are delinquent. The offer shall be at an interest rate no greater than one percent (1%) per annum above the index rate and with monthly payments no greater than those necessary to fully amortize the amount of the balloon payment plus interest over a term which, when added together with the term representing the number of monthly payments made before the most recent notice to refinance, is not less than the original loan term. The lender must offer to the borrower a term of at least one (1) year before the next balloon payment. If the balloon payment is due one (1) month after the preceding monthly payment date, the lender may require the borrower to make a payment equal to the preceding monthly payment on the balloon payment date if the first payment under the note to refinance the balloon note is one (1) month after the balloon payment date. The lender may offer repayment plans to refinance a balloon payment in addition to the plan required by this section. For purposes of this section, "balloon payment" means a payment which is more than three (3) times as big as the mean average of the payments which precede it; and "index rate" means the national average mortgage contract rate for major lenders on the purchase of previously occupied homes which is most recently published in final form by the federal home loan bank board not more than four

(4) months before the date on which the balloon payment is due, or, alternatively, a rate based upon any other independently verifiable index approved by the commissioner.

SECTION 4.

(a) No mortgage lender or broker shall knowingly or intentionally engage in the act or practice of "flipping" a mortgage loan.

(b) As used in this section, "flipping" a mortgage loan means refinancing a mortgage loan within twelve (12) months following the date the refinanced mortgage loan was originated, unless the refinancing is in the borrower's best interest. Factors to be considered in determining the same would include but not be limited to whether:

(1) The borrower's new monthly payment is lower than the total of all monthly obligations being financed, taking into account the costs and fees;

(2) There is a change in the amortization period of the new loan;

(3) The borrower receives cash in excess of the costs and fees of refinancing;

(4) The borrower's note rate of interest is reduced;

(5) There is a change from an adjustable to a fixed rate loan, taking into account costs and fees; and

(6) The refinancing is necessary to respond to a bona fide personal need or an order of a court of competent jurisdiction.

SECTION 5. The department shall enforce the provisions of this act pursuant to title 45, chapter 1.

SECTION 6. This act shall take effect July 1, 2005, the public welfare requiring it.